IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.394 OF 2002
WITH
CIVIL APPLICATION NO.526 OF 2002

Anna Tatoba Parit .. Appellant.
Vs.
Ashok Jivandhar Upadhye & Ors. .. Respondents.

Mr.P.R.Arjunwadkar for the appellant.
Mr.N.J.Patil for respondent nos.1 to 5, 7 to 10.

CORAM : D.B.BHOSALE, J.
DATED : 4TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Concurrent findings of the courts below are under challenged in the present appeal filed by defendant no.1. The suit was filed for possession by the respondent-trust. Both the courts below held that defendant no.1 committed default in payment of rent to the trust and notice dated 10.6.1994 issued by the respondent-trust to defendant no.1 is legal and valid and they are entitled to take possession of the suit land so also the amount claimed in the plaint. Mr.Arjunwadkar, learned counsel for the appellant assailed thejudgments of the courts below solely on the ground that both the judgments are without jurisdiction. He submited that the procedure contemplated by the provisions contained in Bombay Tenancy and Agricultural Lands Act, 1950 (for short

"B.T.& A.L.Act") has not been followd. The respondent-trust has not produced on record the certificate granted by the Collector as contemplated under section 88-B of the B.T.& A.L.Act. Moreover, the procedure for taking possession from the tenant was also not followed by the respondent-trust. He then submitted that the consent of the Charity Commissioner was also not obtained before filing of the suit against the appellant. I perused the judgments of both the courts below so also memo of the appeal filed by the appellants. None of the points which are raised by the appellant in the second appeal were either raised before the trial Court or before the first appellate Court. The submissions advanced by Mr.Arjunwadkar involve disputed question of fact which cannot be allowed to be raised for the first time in the second appeal. Keeping that in view and considering concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court to disturb the findings of fact in the second appeal the submissions advanced by Mr.Arjunwadkar deserve to be rejected. The second appeal, accordingly, fails and is dismissed as such. Consequently, the civil application is disposed of.

(D.B.BHOSALE, J.)